Supreme Court, U.S.
FILED

971990 MAR 30 1998

OFFICE OF THE CLERK

DOCKET NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

LARRY BELIN

Petitioner,

V.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *et al*
MICHIGAN CIVIL RIGHTS COMMISSION, *et al*

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Larry Belin
IN PRO PER
P.O. Box 549
Flint, Michigan 48501

55 pp

I. QUESTIONS PRESENTED

1. Plaintiff having coming before Trail Court and Court of Appeals alleging deprivation of his lawful federal rights which implicitly authorize EEOC to review and to ensure that Plaintiff has received full and fair state civil rights administrative adjudicatory procedures governing "hearing on the record" Lesniak V Fair Emp. Prac. Comm., *supra*, p. 507; Johnson V Silver Dollar Cafe, *supra*, p. 113 in regards to his federal claims of civil rights violations under Title VII's Substantial Weight Review, Section 706(b), 42 U.S.C. 2000e-5(b); its supporting EEOC regulations 29 CFR 1601.21 (e)(2)(I, ii & iii) and 29 CFR 1601.76; states that federal courts precedent "demands that [Trial Court] court ascertain whether alleged infringement of federal rights is fairly attributable to state." Doe V Keane, 658 F.Supp 216, W.D.Mich (1987).

2. Trail Court and Court of Appeals refusal to construct and/or to pass on the issue of Plaintiff's lawful right to have retaliatory investigation under Section 706(b) of Title VII, 42 U.S.C. 2000e-5(b), has violated its duty "to examine whether plaintiff has alleged sufficient facts which, if proved, would comprise actionable deprivation of federal right." Waldron V Rotzler, 862 F.Supp 763, N.D.N.Y. (1994).

Trial Court findings that under federal APA, 5 U.S.C. 704 review of the Commission's authority to act under Title VII of the Civil Rights Act of 1964, Section 701 *et seq*; 42 U.S.C. 2000 *et seq*; and its lawfully promulgated rules under EEOC Procedural Regulations

found under 29 CFR 1601 *et seq*, is not reviewable is erroneous (A7), as this decision conflicts with Congressional mandates and directives requiring the Commission to observe "procedure required by law" 5 U.S.C 706(2)(D); and, conflicts with fundamental federal court principles and decisions relied upon to give supervisory directive to administrative agencies

Trial Court (and Court of Appeals) decision not to review Plaintiff's charge that EEOC refusal to process his EEOC charge, that General

Motors unlawfully retaliated against Plaintiff in regards to the use of its "Open Door" policy (solely because Plaintiff had filed EEOC charge), violates Congressionally created mandates, statutes and regulatory procedures which guarantee and afford Plaintiff "equal protection" under Section 704(a) of Title VII, 42 U.S.C. 2000e-3(a), is not an act of discretion under Title VII, but a violation of Plaintiff's U.S. Const, Am V and Am VIX due process and equal protection of the law doctrines, which guarantee and afford Plaintiff "equal protection" under Section 704(a) of Title VII, and is unlawful and violates an express statutory duty to act, Environmental Defense Fund Inc. V Castle, 657 F2d 275 at 283; D.C. Cir., (1981) under APA Section 706(1 & 2), 5 U.S.C. 701 *et seq*.

Regardless of whether Trial Court is correct in its presumption that Section 704, 5 U.S.C. 704 of the federal Administrative Procedures Act (APA) renders EEOC's statutes and regulations unreviewability, this is a question of law that deal with statutory interpretation of (federal law) Title VII, which falls within the expertise and jurisdiction of federal courts; and, is fully reviewable if it violates an

express statutory duty to act. See Environmental Defense Fund Inc. V Castle, 657 F2d 275 at 283; D.C. Cir., (1981); Covelo Indian Community V Watt, 551 F.Supp 366 (D.D.C, 1982); Carpet, linoleum & resilient Title Layers Local 419 V Brown, 656 F.2d 564 at 567 (C.A. 10, 1981).

Trial Court (and Court of Appeals) have incorrectly interpreted and applied Section 704 of the federal APA, as Congressional mandates and directives (which creates a program or public policy that the congress desire to have implemented) under federal APA clearly "empowered court to require action by agencies that engaged in unnecessary delays or improvidently refused to act" Misaskoff, Judicial Review of Agency Delay & Inaction under Section 706(1) of the APA, *supra*, p. 637.

U.S. Fifth Amendment imposes *prima facie* constitutional guarantee of procedural (administrative) due process upon EEOC to afford Plaintiff right of Substantial Weight Review, fair investigation and right to submit evidence or statement under EEOC Procedural

Regulations found under 29 CFR 1601 et seq. To lawfully effectuate and ensure its citizens' Fifth Amendment rights, Congress has "empowered court to require action by agencies that engaged in unnecessary delays or improvidently refused to act" Carol R. Misaskoff, Judicial Review of Agency Delay & Inaction under Section 706(1) of the APA, 55 Geo.Wash.L.Rev 635 at 637; or that are not "without observance of procedure required by law" 5 U.S.C 706(2)(D) or not "in accordance with law" 5 U.S.C 706(2)(A).

There is sufficient evidence on the record to indicate that Plaintiff had place before Trail Court and Court of Appeals, EEOC's (A-9) refusal to accept, docket, amend (see 29 CFR 1601.12) and investigate Plaintiff's retaliation charges under Section 706(b & d) of Title VII, 42 U.S.C. 2000e-5(b & d), and its supporting EEOC regulation found under 29 CFR 1601.12(b); that, EEOC's refusal to act is not an act of discretion, but a violation of Section 706(b) of Title VII and case law clearly indicates that "commission officials have no discretion to refuse to accept a charge for filing." McKee V McDonnell Douglas Technical Service Co. Inc., 700 F2d 260 (C.A. 2, 1971). It is a material fact that Trail Court and Court of Appeals decision to pass on this legal issue without apparent indications of review is contrary to federal principle that federal courts will not pass on questions of law which determine and/or defines the parameters of an agency's statutory under Section 706(1) *et seq*, 5 U.S.C. 706 *et seq* [see 5 U.S.C. 706(B, C &D)].

II. TABLE OF CONTENTS

Question Presented ..... i, ii & iii
Table of Contents iv
Orders, Judgments & Opinions 2
Jurisdiction 2
Statutory Provision Involved 2
Statement of the Case 4
  Exhaustion of Administrative Remedies 6
  Court Proceedings 6
Reasons for granting the Writ 8
Summary 17
Conclusion 17

Appendix A1

III. INDEX OF AUTHORITIES

CASES:

Appendix A1
Alaska Pipeline Rate Cases, 436 U.S. 63 (1978) 13

Allen V McCurry, 101 S.Ct 411; 14
449 U.S. 90; 66 L.Ed2d 308 (1980).

Allied Stores Of Ohio, Inc. V Bowers, ... 16
79 S.Ct 437 at 440; 352 U.S 522.

Boddie V Connecticut, 401 U.S. 371, 380 (1971). 13

Doe V Keane, 658 F.Supp 216, W.D.Mich (1987) 16

EEOC V American Nat. Bank, ... 9 & 10
420 F.Supp 181, 185-186 (E.D. 1976).

EEOC V Board of Governors of State Colleges, ... 11
957 F2d 424, 429 (C.A. 7, 1992)

EEOC V Cosmair Inc. L'Oreal Hair Div., ... 11
821 F2d 1085, 1089, (C.A 5, 1987).

Garcia V Neagle, 660 F2d 983 (C.A 4, 1981) 13

Heckler V Chaney, 470 U.S. 821 (1985) ..... 9 & 17

Hick V ABT Assoc., Inc., ... 6
572 F2d 960 at 961 (1978).

Johnson V Silver Dollar Cafe, ... 12 & 15
441 Mich 110 at 113; 490 NW2d 337 (1992)

Lesniak V Fair Emp. Prac. Comm., ... 12 & 15
364 Mich 495 at 507; 111 NW2d 790 (1961)

Logan V Zimmerman Brush Co., ... 12 & 13
455 U.S. 422 at 429 & 430.

Matlovich V Secretary of the Air Force, ... 9 & 17
591 F.2d 852 at 857. D.C. Cir. (1978).

McKee V McDonnell Douglas Technical 10
Service Co. Inc., 700 F2d 260 (C.A. 2, 1971).

Pettway V American Cast Iron Pip Co., ... 10
411 F2d 998 (C.A. 5, 1969).

SCM Corp. V FTC, 565 F.2d 807 (C.A. 2, ... 13
1977), *cert.* Denied, 449 U.S. 821 (1980)

United States *ex rel.* Accardi V Shaughnessy, ... 14
347 U.S. 260 at 265 (1954).

Vitarelli V Seaton, 359 U.S. 535 (1959) 1

Voutsis V Union Carbide Corp., ... 14
452 F2d 889 (1971).

Waldron V Rotzler, 862 F.Supp 763, ... 16
N.D.N.Y. (1994).

STATUTES:

Lesniak V Fair Emp. Prac. Comm., ... 12 & 15
Civil Rights Act of 1964, Title VII:
Statute 704(a), 42 U.S.C. 2000e-3(a) 4
Statute 706(b), 42 U.S.C. 2000e-5(b) ..... 2 & 3

Federal Administrative Procedures Act (APA), 5 U.S.C 701 *et. seq.*
5 U.S.C 702 15

EEOC Procedural Regulations, 29 CFR 1601 *et. Seq:*

29 CFR 1601.21 (e)(2) ..... 3, 4, 12 & 13
29 CFR 1601.76 3

Michigan: Const 1963, art 1, sect 17 ..... 17 & 18

MISCELLANEOUS:

Carol R. Misaskoff, Judicial Review ..... 14, 15 & 16
of Agency Delay & Inaction under
Section 706(1) of the APA,
55 Geo.Wash.L.Rev 635 at 637.

Player, Employment Discrimination Law , ... 10 & 11
West Publishing Co.,
St. Paul, Minn., 4th Ed (1988).

DOCKET NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

LARRY BELIN

Petitioner,

V.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *et al*
MICHIGAN CIVIL RIGHTS COMMISSION, *et al*

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Larry Belin, IN PRO PER, petitions this Honorable Court for a writ of *certiorari* to review the final administrative order the United States Sixth Circuit Court of Appeals entered in this case on December 30, 1997; and, the judgment and opinion of the United States District Court for the Eastern District of Michigan Southern Division entered in this case on July 1, 1997.

ORDERS, JUDGMENTS & OPINIONS BELOW

The final review of the United States Sixth Circuit Court of Appeals is an administrative order and is reproduced in the appendix hereto at page 1 (A-1). The unreported Memorandum-Opinion and Order of the district court in this matter is reproduced in the appendix hereto at page 1 (A-2).

JURISDICTION

The judgment of the United States Sixth Circuit Court of Appeals was an administrative order entered by the Clerk of the Court Office on or about December 4, 1997, and the denial of appellant's motion for rehearing to waive the filing of the joint appendix was also an administrative order entered by the Clerk of the Court Office on December 30, 1997.

This Honorable Court's jurisdiction is invoked under 28 U.S.C.A. 1254(1), and its supporting Supreme Court Rule 10(a).

STATUTORY PROVISION INVOLVED

This case involves application of the following language, issues and question of laws surrounding Petitioner's lawful rights under Title VII of the Civil Rights Act of 1964, Section 701 et seq; 42 U.S.C. 2000 et seq (hereafter referred to as Title VII); and its supporting Equal Employment Opportunity Commission (EEOC) Procedural Regulations found under 29 CFR 1601 et seq; and, the following "due process of law" claims grounded on the U.S. Am V and U.S. Am XIV clauses of US Constitution:

> "Whenever a charge is filed by * * * person claiming to be aggrieved * * * alleging * * * an unlawful employment practice, the Commission shall serve a notice of the charge (to the respondent) * * * and shall make an investigation thereof."

> "In determining whether reasonable cause exists, the commission shall accord substantial weight to findings and orders made by State and local authorities in proceedings commenced under State or local law pursuant to the requirements of subsection © and (d)." Title VII Statute 706(b), 42 U.S.C. 2000e-5(b).

* *

EEOC's "Substantial Weight"regulation 29 CFR 1601.76 (which governs review of state civil rights agency's findings and investigation):

> "The Commission shall notify the parties whose cases are to be processed by the designated, certified FEP agency of their right, if aggrieved by the agency's final action, to request review by the Commission within 15 days of that action. The Commission, on receipt of a request for review, shall conduct such review in accord with the procedures set forth in the Substantial Weight Review Procedures." 29 CFR 1601.76.

* *

And 29 EEOC's Reasonable cause determination (Procedure and authority) regulations which defines the congressional mandated "Substantial Weight" found under Statute 706(b) of Title VII, 42 U.S.C. 2000e-5(b) as follows:

> "(2) "Substantial Weight" shall mean that such full and careful consideration shall be accorded to final findings and order, as defined above, as is appropriate in light of the facts supporting them when they meet all of the prerequisites set forth below:

"(I) The proceedings were fair and regular; and

"(ii) The practices prohibited by the state or local law are comparable in scope to the practices prohibited by federal law ..." 29 CFR 1601.21 (e)(2)(I & ii).

* *

"It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency * * * to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title." (Emphasis added) Civil Rights Act of 1964, Title VII Statute 704(a), 42 U.S.C. 2000e-3(a).

STATEMENT OF THE CASE

The following facts are *prima facie* and undisputed. That the General Motors Corporation (GM) had active corporate policy and/or practice of suspending its "Open Door" process whenever a salaried employee files an EEOC charge; and, that the lost of GM's

"Open Door" process would remain in effect "for as long as such charge remain pending with the Commission or state civil rights agency (A-3).

It is also a *prima facie* fact that U.S. District Court Judge Andersen on June 8, 1993 ruled that if GM stop providing its salaried employee the benefits of the company's "Open Door" procedures, to which its salaried employee would other wise be entitled to, simply because an employee had filed a charge with the Commission or state civil rights agency, GM would be guilty of retaliation under Title VII of the Civil Rights Act of 1964 (A-3).

In reference to the time period in which GM freely admits that this illegal practice or policy under Section 704(a) of Title VII, 42 U.S.C. 2000e-3(a) commence, it is a material fact that GM has fix the start of this practice from at least since 1984 (A-4, see Interrogatory No. 22); and it is also a material fact that U.S. District Court Judge Andersen's June 8, 1993 ruling legally ended this unlawful practice (GM's unlawful "Open Door Policy").

There is sufficient evidence on the record for a reasonable fact finder or this court to determine that GM has subject Plaintiff's "Open Door" requests to same "Open Door Policy" practices and/or policy that U.S. District Court Judge Andersen's June 8, 1993 Opinion (A-3) cited as unlawful, retaliatory and in violation of Section 704(a) of Title VII, 42 U.S.C. 2000e-3(a).

Plaintiff on three different occasions filed timely EEOC charges against GM alleging unlawful retaliation under Section 704(a) of Title VII, 42 U.S.C. 2000e-3(a).

Plaintiff filed his initial retaliatory EEOC (Charge No. 054-86-1358) on or about January 8, 1986, after being advised by his immediate supervisory staff and by GM's divisional personnel staff members that they required him (Appellant) to exclusively use GM's "Open Door Policy" to address any and all work related grievances; and, that the use of the "Open Door Policy" would be conditionally tied to Plaintiff dropping any and all of his EEOC charges.

See appendix page 8, for William P. MacKinnon's, GM Vice President of Personnel Administration Development Staff, letter to Plaintiff dated January 30, 1986, confirming Plaintiff attempts to reconcile his employment problems under GM's "Open Door Policy". (A-5).

Plaintiff's second "Open Door Policy" request was filed with GM Vice President of Personnel on or about December 29, 1986 resulting in EEOC Charge No. 23-A-87-2714 dated April 8, 1987. And, the third "Open Door Policy request was filed with GM on or about June 13, 1990 resulting in EEOC's undocketed charge, dated September 24, 1990 (A-6).

It is a *prima facie* and undisputable fact that, as GM freely admits

(A-4) that Plaintiff's written (and numerous oral) "Open Door Policy" requests for assistant from about December of 1985 to June 13, 1990, were subjected to its practice and/or policy of suspending its internal complaint resolution process (Open Door Policy) because salary employee had filed civil rights charge.

Exhaustion of administrative remedies:

The final resolution of the following contested issues between the State of Michigan's Civil Rights Commission (CRC) and its agent Michigan Department of Civil Rights (MDCR) and Plaintiff, so as, there are not other appeals, pending civil rights charges or pending court cases between the above name parties herein involve under EEOC's regulation 29 CFR 1601.21(e)(1)(ii), was concluded on January 31, 1997; and, Plaintiff's right of appeal shall (after 21 days) expire on February 21, 1997.

If an review or investigation made by the Commission or EEOC under Section 706 *et seq* of Title VII, 42 U.S.C. 2000e-5 *et seq*, and its supporting EEOC regulation found under 29 CFR 1601.21(e)(1 & 2) *et seq*, indicates the findings of the "Commission is unreasonable narrow or improperly conducted, the plaintiff should not be barred from a statutory right to a civil action." Hick V ABT Assoc., Inc., 572 F2d 960 at 961 (1978); including but not limited to action under federal Administrative Procedures Act (APA), 5 U.S.C. 701 *et seq*; U.S. Const Am V and Am XIV.

Proceedings in the District Court:
Plaintiff, Larry Belin, IN PRO PER, on February 21, 1997, filed civil action in U.S. District Court for the Eastern District of Michigan, alleging that the EEOC had violated its authority to act under Title VII of the Civil Rights Act of 1964, Section 701 *et seq*; 42 U.S.C. 2000 *et seq* (and its lawfully promulgated rules under EEOC Procedural Regulations found under 29 CFR 1601 *et seq*) as required by federal APA, 5 U.S.C. 701*et seq*; in regards, to Plaintiff right to have Substantial Weight Review, fair investigation, protection from unlawful retaliation and right to submit evidence or statement under EEOC Procedural Regulations found under 29 CFR 1601 *et seq*. (These issue where raised and preserved in paragraphs 1, 20, 25, 28, 33 & 34 of U.S. District Court for the Eastern District of Michigan Southern Division Complaint Number 97-70690.)

Plaintiff also took action against CRC and its agency MDCR under U.S. Am XIV and 42 U.S.C 1983 for violating Plaintiff's constitutional right to administrative adjudicatory procedures under (state) APA, 1969 PA 306, MCLA 24.201 *et seq*; MSA 3.560(101) *et seq*; and, deprivation of Plaintiff Title VII rights.

On or about June 19, 1997 EEOC filed motion to dismiss, citing that Plaintiff brought suit against the Commission under Title VII; and, that the Administrative Procedures Act (APA), 5 U.S.C. 701 *et seq* prohibits review of EEOC's investigations (including retaliation charges and investigation or), Substantial Weight Review, protection from unlawful retaliation and right to submit evidence or

statement under EEOC Procedural Regulations found under 29 CFR 1601 *et seq.*

On July 1, 1997 U.S. District Judge George E. Woods in a non hearing review the parties briefs, granted EEOC's motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction and failure to state a claim for which relief can be granted.

On or about July 11, 1997 Plaintiff filed for rehearing on defendant EEOC order dismissing his complaint against the Commission. On July 14, 1997 U.S. District Court in a non hearing review of the parties briefs denied Plaintiff rehearing motion.

On June 6, 1997 state Defendant filed motion to dismiss, based on the fact that the state is not subject to federal APA; and, because of Plaintiff pursue of exhausting his administrative remedies state statute of limitation ran out (and as such Plaintiff complaint is untimely filed against the CRC and its agent MDCR).

On or about July 24, 1997 Plaintiff filed for rehearing on defendant CRC order dismissing his complaint against the Commission. On August 5, 1997 U.S. District Court in a non hearing review of the parties briefs denied Plaintiff reconsideration motion.

On or about September 5, 1997 Plaintiff filed claim of appeal with U.S. Court of Appeal. Subsequently, all parties submitted timely briefs; however, whether by chance or design Plaintiff was unable to submit joint appendix.

On December 4, 1997 the Office of the Clerk of Court of Appeals dismissed Plaintiff complaint for failure to submit joint appendix. Plaintiff filed motion for reconsideration and/or rehearing on or about December 17, 1997. Plaintiff's motion for rehearing was denied on December 30, 1997.

Although, Clerk of Court of Appeals office stated that they would take "least the mandatory documents . . . before the appeal will be reinstated." (A1). Plaintiff phone call with the Clerk of Office inform him that he may not submit a redundant motion for reconsideration and/or rehearing.

Plaintiff being unable to cover what is needed for his appendix or get the required joint appendix (with Defendants) submitted, filed with Supreme Court as a last measure and as the Court of Last Resort in this matter on or about March 28, 1998.

REASONS FOR GRANTING THE WRIT

The issue presented herein involve a conflict in federal APA in which Trail Court's interpretation of the federal APA under Section 704 precludes its "right to review the EEOC's actions under the APA." (A-2), conflicts with the long standing Supreme Court decision and doctrine in Heckler V Chaney, 470 U.S. 821 (1985), that Section 701(a)(2); 5 U.S.C. 70 *et seq*, was not intended by Congress to "set agencies free to disregard legislative direction" Heckler V Chaney, *supra*, p. 839.

The crux of the Chaney doctrine is best express with the approach taken in Matlovich V Secretary of the Air Force, which explains the importance of federal court's relationship between the Chaney doctrine and federal administrative agencies:

> "The fundamental principle of reasoned explanation . . . serves at least three interrelated purposes: enabling the court to give proper review to the administrative deter-ination; helping to keep the administrative agency within proper authority and discretion, as well as helping to avoid and prevent arbitrary, discriminatory, and irrational action by the agency; and informing the aggrieved person of the grounds of the administrative action so that he can plan his course of action (including the seeking of judicial review)." Matlovich V Secretary of the Air Force, 591 F.2d 852 at 857. D.C. Cir. (1978).

Thus, the question of law presented here is whether judicial review under federal APA, 5 U.S.C. 701 *et seq* will be available against the Commission's refusal to enforce express statutory laws (which requires the Commission to act) found under Title VII of the Civil Rights Act of 1964, Section 701 et seq; 42 U.S.C. 2000 et seq; and its lawfully promulgated rules under EEOC Procedural Regulations found under 29 CFR 1601 et seq.

Plaintiff states that the January 11, 1991 (A-9) letter he received from EEOC denied him statutory and procedural rights under

Section 706(b & d) of Title VII, 42 U.S.C. 2000e-5(b & d), and its supporting EEOC regulation found under 29 CFR 1601.12(b), to amend or "filed fresher charges"11 EPD Cases 7740; EEOC V American Nat. Bank, 420 F.Supp 181, 185-186 (E.D. 1976); of retaliatory discrimination against GM under federal doctrine of "continuing violation" in regards to its (GM) unlawful application of its "Open Door Policy" and medical benefits programs against Plaintiff.

Section 706(b) of Title VII and case law clearly indicates that "commission officials have no discretion to refuse to accept a charge for filing." McKee V McDonnell Douglas Technical Service Co. Inc., 700 F2d 260 (C.A. 2, 1971); therefore, once when MDCR (state civil rights agency) declined to accept, docket and investigate Plaintiff's retaliation charges, Plaintiff argues that Commission's regulations required the EEOC to either amend (see 29 CFR 1601.12) or process Plaintiff's undocketed charge of September 24, 1990 (A-10) in accordance to regulation 29 CFR 1601.13(a)(4).

Regardless of whether the presumption of unreviewability applies, as claimed by Trail Court under Section 704 of the federal APA (A-2), the issue of the EEOC refusal to docket or accept "filed fresher charges" of retaliatory discrimination EEOC V American Nat. Bank, *supra*, p. 185-186; or to amend Plaintiff's charge under EEOC regulation 29 CFR 1601.12(b), is one of statutory interpretation and federal laws which falls exclusively within the expertise of the federal courts.

Supplementary to the above issue, Plaintiff further argues that he has lawfully set before Trial Court and Court of Appeals EEOC's failure to make an investigation thereof unlawful retaliatory "Open Door" employment practices charged submitted by Plaintiff (see A-4 & A-5) under Congressional directives found in Section 704(a) of Title VII, 42 U.S.C. 2000e-3, which literally protects Plaintiff from any and all forms of "employment retaliation because he participated in proceeding or opposed" Player, Employment Discrimination Law; Sect 5.27, p. 270, his employer under Title VII "regardless of the merits of the charge". Pettway V American Cast Iron Pip Co., 411 F2d 998 (C.A. 5, 1969).

Whereupon, Plaintiff's filing with Trial Court and Court of Appeals direct *prima facie* and undisputed evidence in the form of written statements (see A-4 & A-5) by GM that the "Open Door" policy "treatment plaintiff received was because of activity protected by Statute 704(a)" Player, supra, Sect 5.48, p. 403, of Title VII; Section 706(1), 5 U.S.C. 701 *et seq*, of the federal APA grants jurisdictional authority to Trial Court for judicial review to "direct or compel agency (EEOC's protective retaliation) action unlawfully withheld or unreasonably delayed".

The issue as to whether or not GM's "Open Door" Policy" violates Title VII is settle law, as U.S. District Court Judge Andersen on June 8, 1993 (A-3); issued an explicit judicial review of GM's application of its "Open Door Policy" as applied against Plaintiff (and as stated in GM's January 30, 1986 letter to Plaintiff, see A-5) constitute retaliatory discrimination under Section 704(a) of Title VII, 1442 U.S.C. 2000e-3(a).

Accordingly, Plaintiff, has been unlawfully denied right of due process and equal protection of the law doctrines found under Section 704(a) of Title VII, 42 U.S.C. 2000e-3. This deprivation of Plaintiff's Title VII rights clearly violates his U.S. Const, Am V and Am VIX, Title VII and the federal APA, 5 U.S.C. 701 *et seq* civil rights; and federal courts interpretation and directives of Section 704(a) of Title VII, 42 U.S.C. 2000e-3:

> "if [the employer], (e.g., GM, sic) stopped providing [the employee] (e.g., Plaintiff in this case, sic) benefits (e.g., GM's "Open Door Policy", sic) to which he was other wise entitled simply because he filed a charge, the company would be guilty of retaliation." (sic). EEOC V Cosmair Inc. L'Oreal Hair Div., 821 F2d 1085, 1089, (C.A 5, 1987). See EEOC V Board of Governors of State Colleges, 957 F2d 424, 429 (C.A. 7, 1992); and, U.S. District Court Judge Andersen's June 8, 1993 Opinion in EEOC V General Motors Corp., N.D.Ill., (April, 1992) Complaint No. 92-C-2669 (A-3).

Based on the literal interpretation of Title VII's "Substantial Weight" Statute 706(b), 42 U.S.C. 2000e-5(b), and its supporting regulations found under 29 CFR 1601.76 and 29 CFR 1601.21 (e)(2) *et seq*, the Commission has failed to granted Plaintiff appropriate "Substantial Weight" review to ensure that the state (civil rights agency) has protected Plaintiff's civil rights under Section 704(a) of Title VII, 42 U.S.C. 2000e-3 and federal courts interpretation and directives of Statute 706(b) as guarantee:

"(2) "Substantial Weight" shall mean that such full and careful consideration shall be accorded to final findings and order, as defined above, as is appropriate in light of the facts supporting them when they meet all of the prerequisites set forth below:

"(i) The proceedings were fair and regular; and

"(ii) The practices prohibited by the state or local law are comparable in scope to the practices prohibited by federal law ..." 29 CFR 1601.21 (e)(2)(I & ii).

Plaintiff states that CRC and MDCR's refusal to grant his reasonable and timely request (A-11, also see exhibit E-12 & E-13) to state his claims of unlawful civil rights violations and on demand to present evidence on under (the State of Michigan's) Administrative Procedures Act (APA) approved "record made before the CRC [and/or its agent MDCR]". Lesniak V Fair Emp. Prac. Comm., 364 Mich 495 at 507; 111 NW2d 790 (1961); Johnson V Silver Dollar Cafe, 441 Mich 110 at 113; 490 NW2d 337 (1992); has violated Plaintiff's rights under 29 CFR 1601.21 (e)(2)(i).

The legal issues is whether or not the CRC's decision not to granted Plaintiff adjudicatory procedures (A-12) "for [a] hearing appropriate to the nature of the case" Logan V Zimmerman Brush Co., 455 U.S. 422 at 437, "when such an action would be the

equivalent of denying Plaintiff an opportunity to be heard upon his claimed right[s]. (Sic) Boddie V Connecticut, 401 U.S. 371, 380 (1971)" Logan V Zimmerman Brush Co., supra, p. 429 to 430; has violates EEOC's statutory authority to ensure that state civil rights "proceedings were fair and regular" 29 CFR 1601.21 (e)(2)(i), "treatment in the course of legislative and executive investigation and hearing" Const 1963, art 1, sect 17.

Plaintiff argues that the above issue herein involved is a legal determination of EEOC's statutory authority to act, found under Title VII's "Substantial Weight" Statute 706(b), 42 U.S.C. 2000e-5(b), and it supporting regulations found under 29 CFR 1601.76 and 29 CFR 1601.21 (e)(2) *et seq*, is a federal question of law reviewable by federal court under federal Administrative Procedures Act (APA), Section 706(2)(B & D), 5 U.S.C. 701 *et seq*. See Garcia V Neagle, 660 F2d 983 (C.A 4, 1981).

Thus the legal issues that were pending and present before Trial Court (and now this Court) for judicial review involves the determination of the parameters of an agency's authority is a question of law reviewable by the courts. See SCM Corp. V FTC, 565 F.2d 807 (C.A. 2, 1977), *cert.* Denied, 449 U.S. 821 (1980); and, Alaska Pipeline Rate Cases, 436 U.S. 631 at 638 n. 17 (1978).

The Commission is mandated by Congressionally created statutes and regulatory procedures to step in where state "proceeding were [not] fair and regular" (sic) 29 CFR 1601.21(e)(2)(ii), under Title

VII's "Substantial Weight" Statute 706(b), 42 U.S.C. 2000e-5(b), and it supporting regulations found under 29 CFR 1601.76 and 29 CFR 1601.21 (e)(2) *et seq*.

It is clear that the Commission is mandated by Congressionally created statutes and regulatory procedures to step in where state "proceeding were [not] fair and regular" (sic) 29 CFR 1601.21(e)(2)(ii), under Title VII's "Substantial Weight" Statute 706(b), 42 U.S.C. 2000e-5(b); and from the literal reading of it supporting regulations found under 29 CFR 1601.76 and 29 CFR 1601.21 (e)(2) *et seq*, that an EEOC claimant may "resort to the federal remedy if the state machinery has proved inadequate" Voutsis V Union Carbide Corp., 452 F2d 890 (1971); or in circumstances where state civil rights agency under "state law did not provide fair procedures for the litigation of constitution claims" Allen V McCurry, 101 S.Ct 411 at p. 418; 449 U.S. 90; 66 L.Ed2d 308 (1980).

> Congressional policy sought to be enforced by Equal Employment Opportunity section of Civil Rights Act of 1964 is one of eliminating employment discrimination, and the statutory enforcement scheme contemplates a resort to the federal remedy if the state machinery has proved inadequate; the federal remedy is independent and cumulative and it facilitates comprehensive relief." Voutsis V Union Carbide Corp., supra, p. 890.

Federal court has held that a federal agency or commission (e.g., EEOC) is "bound by its rules or regulations" Vitarelli V Seaton, 359 U.S. 535 (1959), which have the force of law United States *ex rel.* Accardi V Shaughnessy, 347 U.S. 260 at 265 (1954); and, as such EEOC's action and inaction in terminating Plaintiff request for investigation and Substantial Weight Review is illegal because such action fails substantially short of the commission's regulations Vitarelli V Seaton, supra, p. 545, under EEOC's regulation 29 CFR 1601.21 (e)(2)(ii) and 29 CFR 1601.76; and Congressional (public) policy under Section 706(b) of Title VII, 42 U.S.C. 2000e-5(b) to protect Plaintiff's constitutional and federal rights under Title VII. U.S. Fifth Amendment imposes *prima facie* constitutional guarantee of procedural (administrative) due process upon EEOC to afford Plaintiff right of Substantial Weight Review, fair investigation and right to submit evidence or statement under EEOC Procedural Regulations found under 29 CFR 1601 et seq. To lawfully effectuate and ensure its citizens' Fifth Amendment rights, Congress has "empowered court to require action by agencies that engaged in unnecessary delays or improvidently refused to act" Carol R. Misaskoff, Judicial Review of Agency Delay & Inaction under Section 706(1) of the APA, 55 Geo.Wash.L.Rev 635 at 637; or that are not "without observance of procedure required by law" 5 U.S.C 706(2)(D) or not "in accordance with law" 5 U.S.C 706(2)(A).

The Commission's decision not to fully grant Plaintiff Substantial Weight Review Procedures and supporting EEOC regulations 29 CFR 1601.21 (e)(2)(I, ii & iii) and 29 CFR 1601.76, of GM's

unlawful use of its "Open Door Policy" against Plaintiff, is not an act of discretion, but a violation of Plaintiff's U.S. Const, Am V and Am VIX due process and equal protection of the law doctrines, Title VII and the federal APA, 5 U.S.C. 706(2).

Trial Court decision to pass on Plaintiff's lawful right to Substantial Weight Review Procedures of GM's unlawful use of its "Open Door Policy" against Plaintiff or his request for lawful "hearing on the record"Lesniak V Fair Emp. Prac. Comm., *supra*, p. 507; Johnson V Silver Dollar Cafe, *supra*, p. 113 (for actual document requesting hearing see exhibits E-12 & E-13); without comment or apparent indications of lawful review under federal APA and Title VII statutes and regulation has caused material injustice to Plaintiff; and has violated principles of major significance to jurisprudence in regards to what is public policy in regards to due process and equal protection of the law doctrines under Title VII's Substantial Weight Review procedures (and supporting EEOC regulations) and federal APA.

Regardless of whether the presumption of unreviewability applies, here again, the forementioned issues passed upon by Trial Court all deal with statutory interpretation of federal law, which falls within the expertise and jurisdiction of federal courts. Trial Court (and Court of Appeals) have incorrectly interpreted and applied Section 704 of the federal APA, as Congressional mandates under federal APA clearly "empowered court to require action by agencies that

engaged in unnecessary delays or improvidently refused to act" Misaskoff, Judicial Review of Agency Delay & Inaction under Section 706(1) of the APA, *supra*, p. 637; under, Congressionally passed legislation and directives which creates a program or public policy that the congress desire to have implemented.

Where Plaintiff has alleged a deprivation of civil rights under Substantial Weight Review, Section 706(b), 42 U.S.C. 2000e-5(b); its supporting EEOC regulations 29 CFR 1601.21 (e)(2)(I, ii & iii) and 29 CFR 1601.76, by defendants [CRC and MDCR] under color of state law [Chapter 4: Procedures in Contested Cases, state APA, 1969 PA 306, MCLA 24.201 *et seq*, MSA 3.560(101) *et seq*] "demands that court ascertain whether alleged infringement of federal rights is fairly attributable to state." Doe V Keane, 658 F.Supp 216, W.D.Mich (1987):

> "It is settled that '[w]hether a pleading sets up a sufficient right of action or defense grounded on the Constitution or a law of the United States, is necessarily a question of federal law, and, where a case coming from a state court presents that question, this court must determine for itself the sufficiency of the allegations displaying the right or defense, and is not concluded by the view taken of them by the state court.' First National Bank of Guthrie Center V Anderson, 29 U.S. 341, 346; 46 S.Ct 135, 137; 70 L.Ed 295; Staub V City of Baxley, 355 U.S. 313, 318; 78 S.Ct 277, 280" Allied Stores Of Ohio, Inc. V Bowers, 79 S.C. 437 at 440; 352 U.S 522.

When examining suit alleging deprivation of Title VII's Substantial Weight Review Procedures by EEOC under regulation 29 CFR 1601.76; and, state civil rights agency's violation of Plaintiff's rights under 29 CFR 1601.21 (e)(2)(I, ii & iii), Plaintiff argues that "it is duty of court to examine whether plaintiff has alleged sufficient facts which, if proved, would comprise actionable deprivation of federal right." Waldron V Rotzler, 862 F.Supp 763, N.D.N.Y. (1994), under federal APA and Title VII's Substantial Weight Review Procedures and supporting EEOC regulations (herein stated).

SUMMARY

The deficiencies of Trial Court's decision in setting the Commission "free to disregard legislative direction" Heckler V Chaney, *supra*, p. 839, is obviously self-apparent to a reasonable fact finder, as EEOC has refused to protect Plaintiff in a *prima facie* and undisputed case involving GM's application of its unlawful "Open Door" policy against Plaintiff under Statute 704(a), 42 U.S.C. 2000e-3(a), investigate or to give creditable "Substantial Weight" review under Statute 706(b) of Title VII, 42 U.S.C. 2000e-5(b) [and supporting EEOC's regulations found at 29 CFR 1601.76, and 29 CFR 1601.21 (e)(2) *et seq]*.

Trial Court findings that review of the Commission's authority to act under Title VII of the Civil Rights Act of 1964, Section 701 *et*

seq; 42 U.S.C. 2000 *et seq*; and its lawfully promulgated rules under EEOC Procedural Regulations found under 29 CFR 1601 *et seq*, is not reviewable under federal APA, 5 U.S.C. 704, is erroneous.

The facts are undisputable that Trial Court's decision conflicts with Congressional mandates and directives requiring the Commission to observe "procedure required by law" 5 U.S.C 706(2)(D); and, conflicts with fundamental federal court principles and decisions relied upon to give supervisory directive to administrative agencies; that this decision "prohibits federal court(s) from giving "proper review to the administrative (EEOC'S) determinations; will not keep the (EEOC) administrative agency within proper authority and discretion; and, will or may allow arbitrary, discriminatory, and irrational action by the agency (EEOC)." (sic) Matlovich V Secretary of the Air Force, 591 F.2d 852 at 857. D.C. Cir. (1978).

CONCLUSION

WHEREFORE, Plaintiff prays that this Honorable Court will under Rule 10. Considerations Governing Review on Writ of *Certiorari*, grant his request for review; that, Trail Court's decision should be summarily reversed in-part; that Plaintiff complaint be remanded back to Court of Appeals [with instruction that Plaintiff be permitted to submit non joint appendix, with Defendants reserving the right to amend the final appendix] for judicial review of the issues contained in this request for Review on Writ of *Certiorari*.

Larry Belin

June 7, 1998

Larry Belin (fed-10)
IN PRO PER
P.O. Box 549
Flint, Michigan 48501

APPENDIX

A- 2 U.S. Court of Appeal for the Sixth Circuit final order and decision.

A- 3 Memorandum-Opinion and Order: U. S. District Court, July 1, 1997.

A- 9 U.S. District Court Judge Andersen's June 8, 1993 Opinion in EEOC V General Motors Corp., N.D.Ill., (1992) Complaint No. 92-C-2669.

A-12 GM's Responses to Plaintiff (GMC Central Office's) First Set of Interrogatories; December 15, 1993.

A-16 William P. MacKinnon's, GM Vice President of Personnel Administration Development Staff, letter to Plaintiff dated January 30, 1986.

A-17 EEOC's (Plaintiff's) September 24, 1990 undocketed charge:

A-19 Gail Brafford's, EEOC Investigator Support Assistant, EEOC Detroit District Office, January 11, 1991 letter to Plaintiff.

A-21 Plaintiff's July 24, 1987 letter to Roland Baldwin, Assistant Director of Conciliation & Hearing Division Legal Affairs Bureau, Detroit MDCR, July 24, 1987.

A-22 Defendant Michigan Civil Rights Commission, et. al's Answer to Plaintiff's Complaint; dated March 27, 1997, p. 7.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

APPEAL FORM U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION: FILE NU. 97-70690
HONORABLE GEORGE E. WOODS

* *

LARRY BELIN
Plaintiff, Court of Appeals File No. 97-1953

VS

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, et al

MICHIGAN CIVIL RIGHTS COMMISSION, et al
Defendants

MEMORANDUM, OPINION AND ORDER

Upon consideration of the appellant's motion to reconsider this courts's order of 12/4/1997 and to waive the filling of the joint appendix, It is ORDERED that the motion be, and it hereby is DENIED. The appellant must submit at least the mandatory documents listed in 6th Circuit Rule 11(f)(1) before the appeal will be reinstated.

ENTERED PURSUANT TO RULE 8(B)
RULES OF THE SIXTH CIRCUIT.
Leonard Green, Clerk

/s/_____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

* * * * * * * * * * * * * * * * * * * *

LARRY BELIN
Plaintiff, Civil Action File No. 97-70690

VS

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, et al

MICHIGAN CIVIL RIGHTS COMMISSION, et al
Defendants

MEMORANDUM, OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse, in the city of Detroit, State of Michigan, on the 1st day of July, 1997.

PRESENT: The Honorable George E. Woods
United States District Judge

This matter having come before the Court on defendants United State Equal Employment Opportunity Commission (EEOC), Gilbert Casellas, and James Neely, Jr.,'s (hereinafter the EEOC defendants) motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction and failure to state a claim for which relief can be granted [Document no. 4];

The Court having review the pleadings submitted herein, and being otherwise fully informed in the matter;

The Court holds that the EEOC defendants' motion to dismiss is GRANTED for the reasons set forth in the opinion that follows.

I. FACTS

Plaintiff Larry Belin filed this pro se action against defendants, including the United State Equal Employment Opportunity Commission, its Chairman, the Director of the Detroit District Office, the Michigan Civil Rights Commission ("MCRC"), its former chairperson and its director on February 21, 1997. Plaintiff's Claims arise out of a dispute with his employer, General Motors Corporation. As a result of his employment dispute, plaintiff filed a complaint with the Michigan Department of Civil Rights ("MDCR"). In plaintiff's first charge, filed November 18, 1985, he alleged that his employer discriminated against him because of his race and violated the Bullard-Plawecki Act. The MDCR dismissed the complaint in June of 1987. In his second complaint filed in January, 1986, plaintiff claimed that his employer retaliated against him for filing the first complaint.

Plaintiff filed this action in February, 1997, seeking declaratory and injunctive relief.

II. LEGAL STANDARD

Defendants' argument implicate two rule governing dismissal. A motion to dismiss under Fed.R.Civ. 12(b)(6) must be denied "unless it appears beyond doubt that the can prove no set of facts in support of his claim which would entitle him to relief." Conley V Gibson, 355 U.S. 41, 45-46 (1957); see also Taxpayers United for Assessment Cuts V Austin, 994 F.2d 291, 296 (Th Cir. 1993); In re Delorean Motor Co., 991 F.2d 12 36, 1240 (Th Cir. 1993).

This Court may neither weight evidence nor assess the credibility of witnesses, but view the evidence in the light most favorable to the nonmovant. Meador V Cabinet for Human Resources, 902 F.2d 474, 475 (Th Cir.), cert. Denied, 498 U.S. 867 (1990). All factual allegation in plaintiff's complaint are deemed true and any ambiguities must resolved in plaintiff's favor. Jackson V Richards Medical Co., 961 F.d. 575, 577 (Th Cir. 1992).

A motion to dismiss under Fed.R.Civ.P. 12(b)(1), challenges the subject matter jurisdiction of the court. In assessing whether it has jurisdiction, the may consider evidence outside the pleadings. Jackson V Ohio Bell Telephone Co., 555 F.Supp. 80 (S.D. Ohio 1982).

III. ANALYSIS

The EEOC defendants move for dismissal on two grounds: that plaintiff has failed to state a claim for which relief can be granted and that the Court lacks subject matter jurisdiction. Because the court finds that plaintiff has failed to state a claim for which relief may be granted it DISMISSES the EEOC defendants.

The gist of plaintiff's complaint against the EEOC is that the failed to properly investigate plaintiff's discrimination charges against General Motors. Even if the Court broadly construes plaintiff's complaint against the EEOC defendants, it concludes that plaintiff has failed state a claim upon which relief may be granted.

For plaintiff to state a claim against the EEOC defendants under Title VII, he must show that Congress granted plaintiff a

right against the EEOC defendants "either expressly or by clear implication." Warth V Seldin, 422 U.S. 490, 516 (1975). Congress has done neither. See McCottrell V Equal Employment Opportunity Comm'n, 726 F.d. 350 (7th Cir. 1984) (citations omitted) (holding that "Title VII does not provide either an express or implied cause of action against the EEOC to challenge its investigation and processing of a charge").

To determine whether Title VII explicitly authorizes a cause of action against the EEOC for inadequate investigation and processing of a charge, the Court must examine the text of the statute. A plaint reading of the statute shows that, given the facts of this, it only authorizes plaintiff to seek a remedy through the EEOC, for discrimination by his employer. The statute further authorizes plaintiff to bring a suit against his employer in federal district court. See 42 U.S.C. 2000e-5, 2000e-16. Plaintiff was employed by GM, not the EEOC; therefore, he has no explicit right to sue the Commission under Title VII.

Nor can plaintiff show the existence of an implied reedy under Title VII to his claims against the EEOC defendants. To determine whether a federal statute implicitly authorizes a cause of action, the court must examine the overall statutory scheme. Transamerica Mortgage Advisors, Inc. V Lewis, 444 U.S. 11, 15-17 (1979). If the scheme is consistent with an inference that Congress intended to allow plaintiff's suit against the EEOC, the court would find an implied right of action. Id. This Court finds no such implied cause of action here.

The statutory scheme and legislative history of Title VII are inconsistent with the proposition that intended as action against

the EEOC because its investigation was unsatisfactory. Instead, Congress created a de novo cause of action against the allegedly discriminating employer which is available to an individual dissatisfied with the EEOC's resolution of his claim. See, e.g., Occidental Life Insurance Co. V Equal Employment Opportunity Comm'n, 432 U.S. 355 (1977). The Supreme Court in Occidental Life reviewed a relevant part of the legislative history which made it clear that:

> "The retention of the private right of action ... is designed to make sure that the person aggrieved does not have to endure lengthy delays if the Commission ... does not act with due diligence and speed. Accordingly, the provisions [of the Act] allow the person aggrieved to elect to pursue his or her own remedy under this title in the [federal] courts where there is agency inaction dalliance ore of the charge, or unsatisfactory resolution."

432 U.S. at 365-66 (quoting Senate Conference Report).

Accordingly, the Court concludes that Congress did not intend that the EEOC be subject to a lawsuit by a charging party who is dissatisfied with the Commission's procedures or determinations. This conclusion is shared by other courts that have considered this issue. See Ward V Equal Employment Opportunity Common, 719 F.d. 311 (Th Cir. 1983), cert denied, 466 U.S. 953 (1984); McCottrell V Equal Employment Opportunity Common, 726 F.d. 350 (7th Cir. 1984), Stewart V Equal Employment Opportunity Common, 611 F.d. 679 (7th Cir. 1979).

In the alternative, plaintiff asserts that he has stated a claim under the Administrative Procedure Act (the "APA" or "Act"). Again, the Court disagrees.

The APA provides that agency action is reviewable if it is "final action for which there is no other adequate remedy in court . . . ." 5 U.S.C. 704. Here, an alternate remedy exists because plaintiff was entitled to proceed to federal district court with his claim. The existence of this remedy precludes this Court's right to review the EEOC's actions under the APA. Stewart V Equal Employment Opportunity Common, 611 F.d. 679 (7th Cir. 1989); Adams V Equal Employment Opportunity Common, 932 F.d. 660, 665 (E.D Pa. 1996).

IV. CONCLUSION

Because the finds ample support for defendants' motion to dismiss pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court GRANTS the EEOC defendants' motion to dismiss.

So Ordered.

/s/
GEORGE E. WOODS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

* * * * * * * * * * * * * * * * * * * *

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Plaintiff,

Civil Action File No. 92-C-2669

VS

GENERAL MOTORS CORPORATION,
Defendant

MEMORANDUM, OPINION AND ORDER

The facts are undisputed. Since 1941 GM has had an "open door" policy, an informal dispute resolution procedure, through which salaried employees may seek investigation and resolution of employment-related problems. Under the "open door" policy, an employee makes a complaint to his or her supervisor. If not resolved, GM staff members in the personnel department at the employee's facility investigate and attempt to resolve the complaint. If the employee is dissatisfied with the Personnel Director's determination at the local facility or division level, he or she may request review by GM's Central office in Detroit, Michigan The central Office reviews the charge and, if necessary, reinvestigates. A final determination is then made as to whether GM will voluntarily provide a remedy to the employee's satisfaction

When an employee files a claim with the EEOC or another administrative agency GM "defers" allowance of use by an employee of the "open door" policy until the matter is resolved with the agency. GM staff in the local personnel department still investigate the charge and report their findings to the central office, but a determination is made as to whether and to what extent GM will resolve the complaint through the EEOC's conciliation procedures, rather than though its own procedures. Thus the "open door " procedure is unavailable to a salaried employee once he or she files a grievance with EEOC or another agency.

GM asserts that unlike Board of Governors, where the employee was denied significant contractual benefits, a denial of the proceeding through the "open door " policy is not adverse because, according to the policy, and unlike an arbitration proceeding as in the Board of Governors, GM retains the prerogative at all times to determine whether and to what extent the complaint should be remedied. The fact remains, however, that the "open door " policy is a privilege granted to salaried GM employees. The fact that GM retains the prerogative to determine a remedy without a binding obligation does not relieve GM from a per se violation under Title VII and the AREA for stripping an employee of a privilege if that employee files a charge with the EEOC. Regardless of GM's control over the process once it has been initiated, or of its intent, Board of Governors is clear in its holding that an adverse measure such as stripping a privilege for filing a charge violates the AREA, and thus, Title VII. Board of Governor, 957 F d. at 428. The court found that any discriminating act, even if benign, must be held to violate the AREA. Id. As the court pointed out, if a party "wants to

lobby for a benign discrimination exception to section 4 (d) [of the AREA], its appeal would be appropriately directed to Congress rather than this court." Id.

GM admits that an employee may proceed through its internal "open door " policy or through EEOC procedures, but not both. Such a policy adversely affects an employee by stripping him or her of an employment privilege for filling with the EEOC. Such activity is expressly prohibited by the literally interpreted provisions of both the AREA and Title VII. This court therefore finds that GM's policy violates the AREA and Title VII and EEOC's motion for partial summary judgement is accordingly granted.

So Ordered.

/s/
WAYNE R. ANDERSEN
UNITED STATES DISTRICT JUDGE

Dated: June 8, 1993

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF GENESEE
HONORABLE DUNCAN M. BEAGLE CIRCUIT JUDGE

* *

LARRY BELIN
Plaintiff

Court No. 93-022306-CZ

GENERAL MOTORS CORPORATION:
GMC Service Parts Operations

Defendant
_____/

INTERROGATORY #12:

In reference to Plaintiff's request for assistant (sic) under GMC's "open Door" policy, and Defendant's denying Plaintiff request for assistant (sic) (as state in GMC V.P. of Personnel's January 30, 1986 letter), please answer the following question:

A. Why was Plaintiff's "Open Door" request turn (sic) down (describe with specificity details)?

B. Under what (list the) policy and what (state the) rules (give page numbers and name of reference GMC's procedural manual) which authorize Corporate management to reject Plaintiff's "Open Door" request?

C. Had Plaintiff (to the best of GM Central Office Corporate management (sic) knowledge) (sic) any civil rights complaint and/or had civil rights complaint pending at time of filing of Plaintiff's "Open Door" request (see GM V.P. of Personnel's January 30, 1986 letter)? If so, state civil rights complaint number and the date this complaint became know.

RESPONSE:

A. Refer Response #22.

B. Refer Response #22.

C. Yes, #87096-E2R (received by Defendant December 20, 1985) and #87747-E2R (received by Defendant February 5, 1986).

INTERROGATORY #21:

Had Plaintiff (to the best of GM Central Office Corporate Management's Knowledge file (sic) any civil rights complaint and/or had any civil rights complaint pending at time of filing of Plaintiff's June 13, 1990 "Open Door" request (to GM's Vice President of Personnel)?

A. If so, state civil rights complaint number and the date when Defendant became aware of Plaintiff's civil rights complaints.

RESPONSE:

Refer Response #12(c). Additionally, #95825-EM-06 (received by Defendant on or about April 27, 1988).

SALARIED PERSONNEL PROCEDURES

"In direct reference to Plaintiff's December 29, 1985 and June 13, 1990 letters to GM's Vice President of Personnel requesting assistant under Corporation's "open door":

INTERROGATORY #22:

Did Defendant (GM) have in place a policy of denying its salaried employee (sic) access to its in house dispute resolution (being the "open door") procedures when (Plaintiff) they have file charges of discrimination, and for as long as such charges of discrimination should remain pending with MDCR and/or EEOC?

A. If so, state the policy, give the rule, page number and identify the company's procedural manual this policy is found in.

RESPONSE:

Defendant's (GM) practice was to defer the open door request if a third party government agency such as a civil court or an administrative agency became involved in a similar review of the matters raised in the open door request."

A. See answer above. Further answering, the practice was part of the open door policy at least since 1984. It is part of the administration of the open door policy.

INTERROGATORY #23:

How long has Defendant policy of denying salaried employee(sic) access to "Open Door" procedures base (sic) on the filing and/or pending of civil rights complaints with MDCR and/or EEOC been in effect (first year to last year, if continuing than state so).

RESPONSE:

See answer 22 and 22a. Further answering, this practice ended in 1992.

By: /s/_____

Thomas A. Cattel (P 32538)
Julie Smith McCoskey (P 39374)
Attorney for Defendant
General Motors Corp.
401 South Woodward Avenue
Suite 400
Birmingham, Mi 48009

GENERAL MOTORS CORPORATION

William MacKinnon
Vice President

January 30, 1986

Mr. Larry Belin
P.O. Box 549
Flint, Michigan 48501-0549

Dear Mr. Belin:

Having written to me on several occasions, I know you are aware that the General Motors Open Door Policy provides that salaried employes (sic) may request a Corporation-level review of matters of personal concern. Normally, a member of my staff would conduct the necessary review, and a response to you would come form my office.

In reviewing the circumstances described in your last letter to me, I understand that you also have filed claims with the Equal Employmen Opportunity Commission. In such cases, the matter is referred to the General Motors Corporation Employment Relations Activity for handling of the formal claim with the Commission; therefore, it would not be appropriate for me to respond at this time.

* * *

If you decide to discontinue the pursuit of your concerns through the Commission, and elect instead to utilize the Open Door Policy, without a third party, please advise me of your decision, and I will act accordingly."

Sincerely,

/s/_____

Personnel Administration
and Development Staff

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

* *

CHARGE
OF DISCRIMINATION

FEPA Charge No: *Undocketed*
EEOC Charge No: *Undocketed*

Michigan Department of Civil Rights and EEOC
(State or local agency, if any)

Name: Larry Blein Street Address: *P.O. Box 549*

City, State and Zip Code: *Flint, Mi. 48501 - Genesee*

NAME IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME.

Name: *GM Warehousing & Distribution Plaint* No of Employee: *Over 100* Street Address: *6060 West Bristol Rd.*

City, State and Zip Code: *Flint, Mi. 48501 - Genesee*

Cause of Discrimination Based on: *X* Race & *X* Retaliation.

Date most recent or continuing:
discrimination took place: *continuing*

The [charge or complaint] particulars are: (*The following is the most relevant part(s) of Plaintiff's EEOC civil rights charge*).

CIVIL RIGHTS - Issue 5: Claimant states that because he has made a charge of discrimination base on race and in retaliation for filing prior civil rights complaints under provisions of 1964 Civil Rights Act ... Statute 704(a), his employment level and status as an employee has been "adversely affected"; and, as such, the issues (administrative procedures, employment security and the "open door policy") surrounding claimant's substandard employment level should be viewed as "conditions of employment" within the meaning of equal employment opportunities statute 703(a)(1 & 2).

"The Claimant, a Blackman, believes that the inability of his Employer to act in "good faith" when approach under the company's "open door policy" (tolling process, employment security) is because of his race and in retaliation for filing previous civil rights complaints under Title VII of 1964 Civil Rights Act Statute 704(a). (E-15). (sic).

X I also want this charge filed with the EEOC.

I declare under penalty of perjury that the foregoing is true and correct

/s/ *Larry Belin* Date: *Sept. 24, 1990*
Charging Party (Signature)

EEOC form 5,
Mar 84.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Room 1540-Patrick V. McNamara Bldg
477 Michigan Avenue Detroit Michigan 48226
Telephone 226-7636

* * * * * * * * * * * * * * * * * * * *

January 11, 1991

Mr. Larry Belin
P.O. Box 549
Flint, Michigan 48501

Dear Mr. Belin:

Your letter concerning allegations of employment discrimination has been received.

After reviewing your correspondence, we have determined that your "new" charge concerns the same issues outlined in your current Michigan Department of Civil Rights (MDCR) charge, assigned our number 23A-87-2714.

Since Michigan is a dual filing state, your charge of discrimination was automatically filed with the Equal Employment Opportunity Commission (EEOC). In accordance with the work sharing agreement between MDCR and EEOC, the agency who initially receives the charge of discrimination will investigate and resolve your charge under their statute. Based on this policy, we are unable to docket your recently submitted complaint.

Under Section 1606.76 of our regulations, you are entitled to request us to perform a Substantial Weight Review of the MDCR's final finding. Tot secure this review, you must request it in writing to this office within 15 days of your receipt of the agency's findings in your case. Otherwise, EEOC will generally adopt the MDCR's finding.

For any questions regarding the investigation of your case, please contact the Michigan Department of Civil Rights.

/s/_____
Gail Brafford
Investigator Support Assistant

Roland Baldwin, Assistant Director
Conciliation & Hearing Division
Michigan Department of Civil Rights
1200 Sixth Avenue
Detroit, Michigan 48226
July 24, 1987

REF: Larry Belin - Complaints #87096-E2R & #87747-E2R
Receipt for Certified Mail #P-612-906-094

Dear Mr. Baldwin:

The claimant's July 13, 1987 (Certified Mail #P-612-909-699) letter was issued in accordance with rule no. 36.6(b), which gives the claimant a legal right(s) to request a reconsideration under rule no. 37.7(a), please comply with that request.

The claimant has not yet received and/or reviewed any of the above documents (Michigan Department of Civil Rights staff report & recommendations - statement of facts) with his consultants. Furthermore, such a review of the above named staff report is necessary for the preparation for any claimant's No Probable Cause (rule 7) hearing.

I would like to thank you in advance for your anticipated courtesy and cooperation.

Very truly yours,

/s/_____
Larry Belin

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

* *

LARRY BELIN
Plaintiff, Civil Action File No. 97-70690

VS

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, et al

MICHIGAN CIVIL RIGHTS COMMISSION, et al
Defendants

Defendant Michigan Civil Rights Commission, et. al's Answer to Plaintiff's Complaint.

32. Defendant MCRC admits that no administrative hearing was held because Plaintiff's allegations of unlawful discrimination were found to lack merit and because Plaintiff did not request an administrative appeal hearing to review the agency's decision. Defendant MCRC denies the rest of the allegations contained herein.